



## **DEPARTMENT OF TRANSPORTATION**

**[4910-22-P]**

### **Federal Highway Administration**

**[Docket No: FHWA-2016-0018]**

#### **Assumption of Authorities**

**AGENCY:** Federal Highway Administration (FHWA); Department of Transportation (DOT).

**ACTION:** Notice; request for comments.

**SUMMARY:** The Fixing America's Surface Transportation (FAST) Act builds on the authorities and requirements in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) and the Moving Ahead for Progress in the 21st Century Act (MAP-21). The FAST Act also builds on efforts under FHWA's Every Day Counts to accelerate delivery of surface transportation projects by institutionalizing best practices and expediting complex infrastructure projects.

The Secretary, in cooperation with the States, must submit recommendations to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate recommendations on legislation to permit the assumption of additional authorities by States. The FAST Act specifically asks for recommendations in the areas of real estate acquisition and project design.

In order to implement section 1316 of the FAST Act, FHWA is soliciting feedback from States and other stakeholders on additional authorities to assume under title 23, including real estate acquisition and project design. The FHWA will collect

suggestions during a 60-day period. At the end of that period, FHWA will assess suggestions prior to providing a Report to Congress.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Electronic Mail: [Section1316FRN@Sharepointmail.dot.gov](mailto:Section1316FRN@Sharepointmail.dot.gov)
- Mail: U.S. Department of Transportation, Dockets Management Facility, Room W12-140, 1200 New Jersey Ave. SE., Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE., between 9 a.m. 5p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.

All comments must include the docket number DOT-FHWA-2016-0018 at the beginning of the submission.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Howell, Office of Information Technology Services, (202) 366-5707, [michael.howell@dot.gov](mailto:michael.howell@dot.gov), Federal Highway Administration, 1200 New Jersey Avenue, SE. Washington, DC 20590, Ms. Janet Myers, Office of Chief Counsel, 202-366-2019, [janet.myers@dot.gov](mailto:janet.myers@dot.gov), Federal Highway Administration, 1200 New Jersey Avenue, SE. Washington, DC 20590, or Ms. Cynthia Essenmacher, Office of Infrastructure (Detail), Federal Highway Administration,

315 W. Allegan St., Ste. 201, Lansing, MI 48913, (517) 702-1839,  
cynthia.essenmacher@dot.gov, Office Hours are from 8:00 a.m. to 4:30 p.m., e.t.,  
Monday through Friday, except Federal holidays.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The FAST Act builds on the authorities and requirements in SAFETEA-LU and MAP-21, and on efforts under FHWA's Every Day Counts in an effort to accelerate delivery of surface transportation projects by institutionalizing best practices and expediting complex infrastructure projects. This includes promoting the transition from FHWA project-level "full-oversight" of the Federal-aid highway program (FAHP) to a risk-based approach to FHWA oversight activities. The FHWA's use of a risk-based approach to stewardship and oversight is intended to optimize the successful delivery of projects and to ensure compliance with Federal requirements by focusing FHWA resources on activities with the highest potential impacts on the success of the FAHP.

Section 1316(a) of the FAST Act directs the Secretary of Transportation to use the authority under 23 U.S.C. 106(c) to the maximum extent practicable to allow a State to assume the responsibilities described in 23 U.S.C. 106(c) on both a project-specific and programmatic basis. Section 1316 of the FAST Act seeks to expand the use of the 23 U.S.C. 106(c) authority for State assumption of responsibilities, and to solicit legislative recommendations for additional authorities for State assumption. Assumption is a key part of the transition to risk-based oversight of the FAHP. The Secretary, in cooperation with the States, must submit recommendations to the Committee on Transportation and

Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate recommendations on legislation to permit the assumption of additional authorities by States. The FAST Act specifically asks for recommendations in the areas of real estate acquisition and project design.

The FHWA may not assign its decisionmaking responsibilities to a State department of transportation (SDOT) unless authorized by law. Section 106(c) of title 23, United States Code (U.S.C.), authorizes the State to assume project responsibilities for design, plans, specifications, estimates, contract awards, and inspections. For projects that receive funding under title 23, U.S.C., and are on the National Highway System (NHS), including projects on the Interstate System, the State may assume the responsibilities unless FHWA, acting under a delegation of authority from the Secretary, determines that the assumption is not appropriate (23 U.S.C. 106(c)(1)). For non-NHS projects, States must assume such responsibilities (23 U.S.C. 106(c)(2)).

Section 106(c)(3) requires FHWA and the SDOT to enter into an agreement relating to the extent to which the SDOT assumes project and program responsibilities. This Stewardship and Oversight Agreement (S&O Agreement) includes information on which entity is responsible for specific project approvals and related responsibilities. The S&O Agreement also contains provisions relating to FHWA oversight of the FAHP, as part of the oversight program required by 23 U.S.C. 106(g).

In 2015 and 2016, all S&O Agreements with the SDOTs were updated and executed. The new S&O Agreements contain specific project and program level assumptions of responsibilities agreed upon between FHWA and the respective SDOTs

(Attachment A). Examples of responsibilities assumed by some States include approvals and related responsibilities affecting real property as provided in 23 CFR 710.201(i) and any successor regulation in 23 CFR part 710.

The agreements also include a broader list of title 23 program actions and agency points of contact (Attachment B). In addition, some States have assumed authorities under other statutory provisions, such as National Environmental Policy Act categorical exclusion approval actions assigned through a programmatic agreement pursuant to Section 1318(d) of MAP-21 and 23 CFR 771.117(g).

Commenters may wish to consider Attachments A & B, as well as other authorities that presently permit or prohibit State assumption, when developing their comments on additional authorities for SDOTs to assume. The S&O Agreements are available at the following Web site: <http://www.fhwa.dot.gov/federalaid/stewardship/>.

## **II. Objectives of this Notice**

The FHWA is soliciting feedback from States and other stakeholders on additional authorities to permit States to assume responsibilities of the Secretary under title 23, U.S.C., including real estate acquisition and project design. The intent of this Notice is to seek feedback on ways in which FHWA could change existing regulations, policies, guidance, and/or administrative practices to better reflect the legislative purpose of section 1316, and to seek suggestions on legislative changes meeting the requirements of section 1316(b) of the FAST Act. Section 1316(b) requires the Secretary, in cooperation with the States, to submit recommendations for legislation to permit the assumption of additional authorities by States, including with respect to real estate

acquisition and project design. This notice gives States and other stakeholders an opportunity to share comments and make recommendations to allow further State assumption of authorities for any project phase.

### **III. Request for Comments**

In accordance with section 1316 of the FAST Act, FHWA seeks input from States and other stakeholders on what legislation, regulations, or policy they believe would accelerate project delivery. Recommendations may address any aspect of the FAHP, including, but not limited to, project design, real estate acquisition, plans, specifications, estimates, contract awards, and inspection of projects, on both a project-specific and programmatic basis.

The FHWA is soliciting feedback from States and other stakeholders on additional authorities States may wish to assume under title 23, including real estate acquisition and project design. The FHWA's goal is to understand which additional authorities of the Secretary States might wish to assume, and what revisions to existing legislation, regulations, policies, guidance and/or administrative practices are needed to permit such assumptions. Specifically, FHWA welcomes suggestions on:

(1) Additional authorities States could assume for project plans, specifications, estimates, contract awards, and inspection of projects,

(2) Additional authorities States could assume for the real estate acquisition and project design process, and

(3) Additional project or program level authorities, including new laws, regulations and policies, that would accelerate project delivery.

Commenters are encouraged to address any or all of the areas above. In responding, commenters may wish to address: current assumptions contained in State S&O agreements, the additional responsibilities the commenter would like States to be able to assume, the commenter's specific goals for proposed assumption of additional authorities, changes to legislation, non-legislative actions FHWA might take to achieve those goals, the benefits and costs associated with the proposed assumption of authority, whether the proposal affects only FHWA or may have impacts on the responsibilities of other Federal agencies, the rationale and evidence to support the recommendation, and the roles of other stakeholders. Legislative recommendations and specific, actionable proposals for the revision of existing regulations, policies, guidance, and/or administrative practices are most useful. As a result, commenters are encouraged to focus on matters within the control of FHWA and Congress.

Issued on: August 22, 2016.

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Gregory G. Nadeau  
Administrator  
Federal Highway Administration

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